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## TRANSMITTAL FORM

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Filing Date	July 25, 2001
First Named Inventor	Asa G. KLING
Art Unit	2179
Examiner Name	S. M. Hanne
Attorney Docket Number	3613-0102P

### ENCLOSURES (Check all that apply)

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Date	March 5, 2007	Reg. No.	32,334



**MS APPEAL BRIEF - PATENTS**  
**PATENT**  
**3613-0102P**

**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

IN RE APPLICATION OF

Asa G. KLING et al.

APPL. NO.: 09/911,733

FILED: July 25, 2001

FOR: PRODUCT COST CONTROL GRAPHICAL USER INTERFACE

BEFORE THE BOARD OF APPEALS

APPEAL NO.:

GROUP: 2179

EXAMINER: Sara M. HANNE

**REPLY BRIEF UNDER 37 C.F.R. § 41.41**

**MS APPEAL BRIEF - PATENTS**

Commissioner of Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

This Reply Brief responds to the Examiner's Answer dated January 4, 2007.

For clarity, the issues presented in the Appeal Brief filed October 18, 2006, will be repeated, and the reply to the Examiner's Answer will substantially correspond structurally to the argument section in the Appeal Brief.

**I. ISSUES ON APPEAL:**

The Final Office Action provides four (4) grounds of rejection for review on appeal.

- (1) Claims 1-2, 4-5, 8, 13-14, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Jones et al.* (USP 6,516,324) (hereinafter “*Jones*”) and further in

view of *Kawarizadeh et al.* (USP 5,903,222) (hereinafter “*Kawarizadeh*”)<sup>1</sup>;

(2) claims 3, 8-12 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Jones* and *Kawarizadeh*, and further in view of *Cunningham et al.* (USP 6,029,139) (hereinafter “*Cunningham*”);

(3) claims 6-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Jones* and *Kawarizadeh*, and further in view of *Amado* (USP 5,701,400) (hereinafter “*Amado*”); and

(4) claims 16, 18, 20, 21, and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Anderson et al.* (USP 5,974,396) in view of *Kawarizadeh*.

## **II. NEW POINTS OF ARGUMENT RAISED BY EXAMINER’S ANSWER:**

Appellants are providing this Reply Brief to respond to new points of argument raised in the Examiner’s Answer. Appellants do not disagree with paragraphs (1)-(8) of the Examiner’s Answer. The specific new points of argument that are raised in paragraph (10) to which Appellant disagrees are as follows:

The Examiner introduces new arguments with regard to claims 1-2, 4-5, 6, 13-14, 16, and 21-22 and incorrectly interprets the teachings of the *Kawarizadeh* reference. Appellants’ response to these assertions is discussed in paragraph A. through B. below.

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<sup>1</sup> The Official Action rejects these claims under 35 U.S.C. § 103(a) as being unpatentable over *Jones et al.* (USP 6,516,324) and further in view of *Kawarizadeh et al.* (USP 6,384,728). However, Patent No. 6,384,728 is issued to *Kanor*, the reference cited in the Examiner’s previous rejection. Based upon a telephone conference with the Examiner, the Examiner confirmed the typographical error and indicated the claims are rejected asserting *Kawarizadeh et al.* (USP 5,903,222).

**III. REPLY:****A. The Rejection Fails to Establish *Prima Facie* Obviousness of Independent Claim 1.****1. The cited references fail to teach or suggest all of the elements of claim 1.**

In response to the Appellants' arguments regarding claim 1 that the cited references fail to teach or suggest a button for displaying one of a plurality of reports containing information relating to usage of a plurality of specific incontinence products pertaining to a selected institution and a selected period, the Examiner responds in her Examiner's Answer on page 13 as follows:

Kawarizadeh teaches a product monitoring system monitoring the usage of several specific incontinence products (Column 4, lines 4 et seq.).

Appellants maintain that the Examiner is mischaracterizing *Kawarizadeh*. At the citation noted by the Examiner, specifically, col. 4, lines 3-16, *Kawarizadeh* discloses as follows:

A further object of the present invention is to provide a system for remotely monitoring the wetness condition of a plurality of garments such as may be worn by a number of patients in a nursing home. Such a system is comprised of a plurality of garment wetness sensors, each being electronically encoded with a unique address and having an output coupled to a transmitter for transmitting the encoded address of the garment in the presence of a wet garment condition, whereby each of the wetness sensors is affixed to a garment to be monitored. The system further comprises at least one receiver for receiving the transmitted encoded signals, a decoder for determining the address of the source of the transmitted signal, and an annunciator for informing an observer as to the address of the wet garment signal.

As can be seen from the above disclosure, *Kawarizadeh* is directed to a system that monitors the wetness condition of a plurality of garments, so that upon detecting wetness of the garment, the system may alert a nurse that a particular patient's garment is wet. The Examiner's interpretation as this disclosure teaching monitoring the usage of several specific incontinence products is improper.

In addition, the Examiner asserts in her Examiner's Answer on page 14 as follows:

The Examiner has proved, as seen above, that *Kawarizadeh* does teach storing information as seen in Col. 12, lines 62-65, where it is explained that specific incontinence products belonging to particular patient wearing the garments are tracked by storing data indicating whether the garment has been used (wetted) or not corresponding to each particular patient in a database. Further, the CPU uses this database to send alerts to caregivers in a reporting fashion (col. 12, line 62-col. 13, line 8).

Appellants respectfully disagree with the Examiner's characterization of this reference.

At col. 12, line 62 through col. 13, line, *Kawarizadeh* discloses as follows:

In the preferred embodiment of the invention, the "wetness" signals arriving at receiver 80 are monitored by a computer (CPU) 82 and logged into a database using software, such as commercially available from Zaggie, Inc. as Caretrac.TM. software. In this regard a complete, time-stamped history of the patient in a nursing home, for example, may be kept automatically. This can help ensure that they are receiving proper care while also assisting the nursing staff by providing vital information regarding a patient's bodily functions. In addition to maintaining a database of patient information, CPU 82 can also function to periodically remind care givers that a wet garment 19 still needs attention or that a given patient is not urinating regularly.

As can be seen from the above disclosure, *Kawarizadeh* teaches determining whether a patient's undergarment is wet. This is determined by a wet garment detector. The database discussed in *Kawarizadeh* is merely concerned with storing the "wetness" signals in a database in order to ensure that patients are receiving proper care and, further, to provide vital information regarding a patient's bodily functions. There is no disclosure in *Kawarizadeh* that is directed to storing information regarding specific incontinence products or the type of incontinence products that are used on a patient. As such, the Examiner's conclusion that *Kawarizadeh* teaches "storing information as seen in Col. 12, lines 62-65, where it is explained that specific incontinence products belonging to particular patient wearing the garments are tracked by storing data indicating whether

the garment has been used (wetted) or not corresponding to each particular patient in a database" is wholly erroneous.

Even considering the Examiner's combination, *arguendo*, there would still be no disclosure that is directed to usage of a plurality of specific incontinence products pertaining to a selected institution and a selected period. *Kawarizadeh* fails to teach or suggest tracking usage of specific incontinence products. *Kawarizadeh* merely is concerned with determining whether a garment is wet.

For the reasons set forth above, and for the reasons set forth in Appellants' Appeal Brief, there is no disclosure that is directed to a button for displaying one of a plurality of reports containing information relating to usage of a plurality of specific incontinence products pertaining to a selected institution and a selected period, as required by claim 1. The Examiner has admitted that *Jones* fails to teach or suggest this claim element. Further, Appellants maintain that *Kawarizadeh* fails to cure the deficiencies of the teachings of *Jones*, assuming these references are combinable, which Appellants do not admit. As the Examiner has failed to provide references, either alone or in combination, that teach or suggest all of the claim elements, Appellants maintain that the Examiner has failed to establish *prima facie* obviousness.

2. The Examiner has failed to provide proper motivation in support of her rejection of claim 1.

In response to Appellants' argument that there is no motivation to combine the teachings of *Jones* with the teachings of *Kawarizadeh*, the Examiner asserts in her Examiner's Answer on page 15 as follows:

The interface of *Jones* may be used in several different medical applications as suggested by *Jones* (Col. 4, lines 40-48). *Jones* further explains how the monitoring systems can be made

more universal, and that it would be advantageous to use something other than a imaging implementation. Specifically, Jones states: "the invention has application in user-operated electronic equipment having the ability to log data indicating how the equipment is being used.", (Col. 4, lines 44-48), log data as provided by the database of Kawarizadeh (Col. 12, line 64).

The Examiner's assertions are incorrect. As noted above, *Kawarizadeh* is merely concerned with determining whether a garment is wet, not how the equipment is being used. As such, Appellants maintain that that there is no motivation to make the combination as asserted by the Examiner. As the Examiner has failed to provide proper motivation to combine the teachings of the cited references, Appellants maintain that the Examiner has failed to establish *prima facie* obviousness.

3. The Examiner has asserted non-analogous art in support of her rejection of claim 1.

In response to Appellants' argument that the cited art is non-analogous, the Examiner responds in her Examiner's Answer on page 15, as follows:

In this case, both Jones and Kawarizadeh both acquire data and store such data involving medical application and therefore are both in the field of applicant's endeavor.

Appellants respectfully disagree with the Examiner's assertions and submit that the Examiner, again, is mischaracterizing the cited art.

Neither of the cited references are similar to Applicants' field of endeavor. In contrast, the disclosure of *Jones et al.*, as stated in the Field of the Invention, is directed to centralized generation of reports which compile and/or summarize operational data from remotely located user-operated electronic devices, for example, imaging devices used for medical diagnosis.

The disclosure of *Kawarizadeh*, as recited in the Field of the Invention, is directed to a wetness-sensing device for diapers and other undergarments to enable the prompt changing when

they become wet. The invention is further related to a reusable device containing a non-capacitive sensor mounted on the external surface of any type of diaper and a transmitter for relaying the presence of a wetness condition to a remotely monitored station. As such, neither of these references are similar to Applicants' field of endeavor.

For the reasons set forth above, and for the reasons set forth in Appellants' Appeal Brief, neither of the references are within Appellants' field of endeavor and, further, neither of the references are reasonably pertinent to the particular problem with which the Appellants are involved. As such, Appellants maintain that the Examiner has cited non-analogous art in support of his rejection of claim 1. As such, Appellants maintain that claim 1 is patentable over the cited references.

**B. The Rejection Fails to Establish *Prima Facie* Obviousness of Dependent Claim 6.**

In response to Appellants' argument that *Amado* fails to teach or suggest "wherein the summary report further includes a graph pertaining to costs associated with the products used," as required by claim 6, the Examiner responds in her Examiner's Answer on page 17 as follows:

Amado clearly teaches a graph pertaining to costs of products used (Fig. 55)...

Appellants respectfully submit that the Examiner is mischaracterizing the cited reference.

However, *Amado* merely discloses at col. 43, lines 19-24 as follows:

FIG. 55 shows that action categories views are highly customizable. The invention's user interface lets any executive tailor an application to his/her needs. This executive may define customized screens instantly, with specific graphs, messages, personal notes . . . even video clips and sound notes.

Appellants maintain that this disclosure is wholly insufficient to teach or suggest wherein the summary report further includes a graph pertaining to costs associated with the products used.

As the Examiner has failed to provide references that teach or suggest all of the claim elements, Appellants submit that the Examiner has failed to establish *prima facie* obviousness under 35 U.S.C. § 103 and, thus, claim 6 is allowable over the cited references.

In addition, the Examiner has failed to address Appellants' arguments that there is no motivation to combine the references as asserted by the Examiner.

For all of the reasons set forth above, Appellants maintain that claim 6 is patentable over the references as cited.

**C. The Rejection Fails to Establish *Prima Facie* Obviousness of Independent Claim 16 and Dependent Claim 21.**

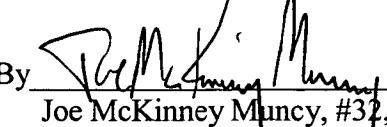
The Examiner appears to rely on her arguments of claim 1 to respond to Appellants' arguments against her rejection of claims 16 and 21. However, for the reasons set forth above, and for the reasons set forth in Appellants' Appeal Brief, Appellants maintain that claims 16 and 21 are patentable over the references as cited.

#### IV. CONCLUSION

The withdrawal of the outstanding rejections and the allowance of claims 1-16, 18, and 20-23 is earnestly solicited.

Respectfully submitted,

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